IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9289 of 1993

For Approval and Signature:

Hon'ble MR.JUSTICE K.M.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

ANANDGAURI T VAISHNAV

Versus

COMMISSIONER OF EDUCATION

Appearance:

1. Special Civil Application No. 9289 of 1993

MR HJ NANAVATI for Petitioner No. 1

MR BY MANKAD, AGP for Respondents No. 1-3

MR MN MEHTA for Respondent No. 4

CORAM : MR.JUSTICE K.M.MEHTA

Date of decision: 21/01/2002

ORAL JUDGEMENT

1. Smt. Anand Gauri Tribhuvanlal Vaishnav, petitioner has filed this petition under Article 226 of the Constitution in connection with non-payment of

pension and pensionary benefits to the deceased Tribhuvanlal Vaishnav husband of the petitioner who had retired as secondary teacher after rendering of 45 years of service as a teacher.

2. The facts giving rise to this petition which is stated in the petition are as under:

2.1 The petitioner is the widow of deceased Tribhuvanlal Vaishnav. The deceased retired as secondary teacher from Seth Gokuldas Tejpal High School, Mandavi, Kutch - respondent No.4 herein. It was stated in the petition that her husband since deceased was appointed in various high schools prior to 1945. Initially for 2 years he had worked as Assistant Teacher in R.D.High School, Mundhra, Kutch and thereafter for 5 years he was working in Education office at Bhuj-Kutch and thereafter for 11 years he was working as Assistant Teacher in Gujarati School in Deshalpur Kanthi, Kutch. Later from December 1945 till his retirement i.e. 30.4.1973 he worked in respondent No.4 school. He died on 20th September, 1985.

2.2 It has been stated in the petition that on and from 20th September, 1973, the Gujarat Secondary Education Act, 1972 (hereinafter after referred to as `the Act') came into force by which protection to the employees of Grant-in-Aid Schools have been given. It also lays down the conditions of service for such employees. Section 534 of the Act pertains to the first regulation made by the State Government in connection with regulation of Secondary Schools in the State.

2.3 Accordingly, the Gujarat Secondary Education Regulations, 1974 was framed by the Government of Gujarat on 16th March, 1974. The said regulations came into force on the said date. The said regulations are statutory in nature. Regulation 26 pertains to the pension and provident fund of the employee of a registered private secondary school. The said regulation which has been quoted in the petition reads as follows:

"Regulation 26: Pension and Provident Fund:

(1) Every employee of a registered school which received Government aid (hereinafter in these regulations referred to as "Aided School") who was appointed before 1st April 1969 and has exercised in writing his option for the pension scheme and every employee of such school who is appointed on or after 1st April 1969, shall be

eligible to get pension as per rules prescribed by the State Government.

(2) The employees of an Aided School appointed before 1st April 1964 and who have opted for Contributory Provident Fund shall subscribe to that Fund as per rule prescribed by the State Government in that behalf.

(3) The management of a registered school other than an Aided School may have such contributory provident fund scheme of its own as is sanctioned by the Board.

(4) Nothing in these regulations shall apply to part-time employees of a registered school."

2.4 It is a case of the petitioner that pension schemes were made applicable for the employees of the registered private school which includes the employees who were appointed before 1.4.69 and who has exercised in writing his option for pension scheme.

2.5 It has been stated in the petitioner that prior to 1974 the employees of the schools were governed by Contributory Provident Fund Scheme and as per the Government Policy which has been framed subsequent to the year 1974 all those employees who have opted for pension scheme are required to deposit with the Government the employer's shares of Contributory Provident Fund. On depositing such amount, the concerned employee becomes eligible for pension.

2.6 Accordingly, petitioner's husband had deposited C.P.F. contribution with the Government. The petitioner states that after depositing the said amount, his pension papers were prepared by the office of the District Education Officer somewhere during 1979-80. Thus, the pension papers were sent to the District Education Officer by the respondent No.4 school. It is also stated in the petition that the petitioner late husband had also opted for the pension scheme.

2.7 It was also stated that petitioner had written a letter to respondent No.4 school requesting them to send all the details right from the appointment order to the service book of the petitioner so as to enable her to make appropriate representation before the Government. Against that school replied on 15.1.88 that the pension can be paid only to living persons if he is eligible for the same.

2.8 It appears that thereafter the pension papers of husband of the petitioner were sent to the office of the District Education Officer somewhere in December, 1988.

2.9 The petitioner had also made representation on 16.11.88 to the Minister of Personnel and Pensions, Government of India ventilating her grievance. Thereafter petitioner had written a letter dated 20.9.89 to the respondent No.3 namely District Education Officer, Bhuj-Kutch. The respondent No.4 school had also addressed a recommendatory letter to respondent No.1 i.e Commissioner of Pension vide letter dated 4th October, 1989. Alongwith the said recommendatory letter, according to the information of the petitioner the respondent No.4 school had also addressed a letter to the District Education Officer wherein it has been specifically stated that the pension case of the petitioner's husband was submitted to the office during his life time and as per the instruction given by respondent No.3 herein the employer's contribution of C.P.F. was also deposited with the Government. Thereafter petitioner also addressed a letter dated 1.10.90 to the Secretary, Ministry of Education giving the full details about service history of her husband.

2.10 As the petitioner did not receive the pensionary benefits, the petitioner has filed the present petition somewhere on 29th March, 1993.

3. Mr.H.J.Nanavati, learned advocate for the petitioner submitted that the school authority has addressed a letter dated 1.2.75 to the petitioner as to whether he wants to exercise option regarding pension or not. That letter has been produced on Page 50 of the petition. In response to that petitioner had also addressed a letter to the school authority on 12.2.75 wherein he has exercised option and gratuity and whatever amount he has paid provident fund may be deducted in this behalf. Thus he has already exercised option of pension in this behalf. Now as per the scheme of the act the petitioner is also entitled to family pension also.

4. As regards respondents are concerned, respondent No.4 school authority has filed an affidavit-in-reply of Shri Chamanbhai H.Soni, Head Master of the respondent No.4 - school wherein it has been stated that in the year 1972-73 the pension scheme was made applicable to the teachers of private secondary school at that time then principal of the school has followed up the resolution of the Government but the husband of the petitioner had not

opted for pension. Again as the G.R. of 20.9.72 was rejected on 1.2.75, then principal wrote a letter to the deceased Tribhuvanlal.

5. In the affidavit it has been stated that the school has refunded the contributory provident fund deposited by the late Tribhuvanlal as per direction of respondent No.3 on 4.8.80, and received receipt from the deceased Tribhuvanlal.

6. Learned advocate for the petitioner has referred the Resolution 26 of the Gujarat Secondary Education Regulation of 1974, which came into force with effect from 16th March, 1974, in which it is mentioned that the employees who were appointed before 1st April, 1969, and have exercised in writing, their option for the pensionary scheme and the employees who were employed on or after 1st April, 1969, shall be eligible to get pension as per rules prescribed by the State Government. He further submitted that the first Government Resolution, Education and Labour Department dated 21.12.1971, introduced pensionary scheme and get the option to the employees to be obtained within a period of one year with effect from 21.12.1971. The Government also passed resolution of Education and Labour Department extended that period of option one year more for the pensionary benefits to the employees.

6.1 Learned advocate for the petitioner further submitted that the Government Resolution dated 15.11.1978 extended that period till 31.1.1979. According to him the petitioner has already opted the pensionary benefits after 31st March, 1975, before 31st January, 1979, the petitioner would also be entitled for the pensionary benefits as he has already opted unconditionally after 31st March, 1975.

6.2 Learned advocate for the petitioner further submitted that as per the practice of the Government, in case any employee is unable to return the amount of contributory fund and the employees opted the pensionary benefits then the pensionary benefits can be extended after deducting the amount of Contributory Provident Fund.

7. In view of the aforesaid facts and circumstances of the case, if the following directions are given then it will meets the ends of justice.

(i) The Commissioner of Education, Gandhinagar, respondent no.1 (now the Commissioner of School,

Mid-day-Meal Scheme, Gandhinagar, a new body created after the petition is filed and Director of Pension and Provident Fund, Ahmedabad respondent No.2 herein may be directed to grant necessary pensionary benefits to the petitioner Mrs.Anand Gauri Tribhuvanlal Vaishnav.

(ii) It may be noted from the record that the communication dated 4.8.80 addressed by petitioner to the principal of school that petitioner had received Rs.2074.56 amount which he has deposited earlier in this behalf, and therefore, the authorities while granting pension to the petitioner, the amount of Rs.2074.56 be deducted from the said amount.

(iii) As the matter is of 1993 and petitioner has already retired and expired somewhere on 1985, I request the authority to grant necessary pensionary benefits to the petitioner as well as family pension which is available to the petitioner in accordance with law, as early as possible preferably by 15th March, 2002.

8. In view of the aforesaid directions, the Special Civil application stands disposed of. Rule is made absolute to the aforesaid extent. No order as to cots.

(K.M. Mehta, J.)

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